

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION**

This document relates to:  
*The Muscogee (Creek) Nation v. Purdue  
Pharma L.P., et al.*  
Case No. 18-op-45459-DAP

MDL No. 2804

Case No. 1:17-md-2804

Hon. Dan Aaron Polster

**DISTRIBUTORS' AND PHARMACY DEFENDANTS' RESPONSE TO  
THE MUSCOGEE (CREEK) NATION'S MOTION TO CORRECT CLERICAL ERROR**

Recognizing that it cited and attached an entirely irrelevant unpublished trial court order to its Opposition to Distributors' and Pharmacy Defendants' motions to dismiss its complaint, the Muscogee (Creek) Nation now has obtained leave to attach a different trial court order. This new order, however, provides no more support for the Nation's arguments than the old, irrelevant one did, and the Nation still fails to cite a single Oklahoma case relevant to any of the Distributors' and Pharmacy Defendants' arguments for dismissal of the Nation's public nuisance claim.

The Nation cited only two Oklahoma cases in support of its opposition to Distributors' and Pharmacy Defendants' motions to dismiss its public nuisance claim. Dkt. 1008 at 74–87. Both were unpublished trial court orders; neither offered any analysis of Oklahoma public nuisance law. Distributors' Reply, Dkt. 1086 at 12–14; Pharmacy Defs.' Reply, Dkt. 1087 at 14–15 & n.12. Nevertheless, the Nation contended that the orders negated published Oklahoma precedent limiting public nuisance to uses of property that cause injury to the property of another. Distributors' Br., Dkt. 925-1 at 17.

Distributors and Pharmacy Defendants noted the irrelevance of the cited orders in their Replies. Distributors' Reply 12–14; Pharmacy Defs.' Reply 15 n.12. Four days after Defendants

filed their Replies, the Nation sought and ultimately received leave to “correct” the record and substitute the original Exhibit L, a 1998 trial court order from the State of Oklahoma’s suit against tobacco companies that did not mention public nuisance, with a “corrected” Exhibit L. While the new Exhibit L does address nuisance, it nevertheless does not address the property requirement or any of Defendants’ other arguments supporting dismissal of the public nuisance claim. The order addresses only the remedies available to public bodies under Oklahoma public nuisance law. According to the order, the tobacco defendants moved for summary judgment on the State’s attempt “to recover both actual and punitive damages, in excess of ‘abatement damages.’” “Corrected” Ex. L at 1. After emphasizing that public bodies may seek only limited remedies, the order grants partial summary judgment to the defendants, holding that the State’s “claim for damages is limited to damages sufficient to complete the abatement remedy as to any proven wrongful acts.” *Id.* at 3. There is no indication that the court considered (or that the tobacco defendants even briefed) any of the arguments that Defendants raised in their motions to dismiss the Nation’s claims.

In short, neither the old Exhibit L nor the “corrected” one have any bearing on Defendants’ motions to dismiss the Nation’s public nuisance claim. The Nation’s public nuisance claim (as well as all of its other claims) should be dismissed for the reasons stated in the Defendants’ motions to dismiss.

Dated: December 5, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Ashley W. Hardin, hereby certify that the foregoing document was served via the Court's ECF system to all counsel of record.

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